

~~03-2012-7003~~
03-2012-7013

Lodged 10/17/12
CLERK
Breslube Penn
Superfund Site

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

| | | |
|---|---|------------------------------|
| In re: |) | Chapter 11 |
| |) | |
| Hussey Copper Corp., <i>et al.</i> , ¹ |) | Case No. 11-13010 (BLS) |
| |) | |
| Reorganized Debtors. |) | Jointly Administered |
| |) | Re: Docket Nos. 916 and ____ |
| |) | |

**ORDER APPROVING SETTLEMENT AGREEMENT BETWEEN AND
AMONG THE DEBTORS, THE UNITED STATES,
ON BEHALF OF THE UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY, AND THE BRESLUBE-PENN PERFORMING TRUST**

Upon the Reorganized Debtors' Motion for Approval of Settlement Agreement with the United States, on Behalf of the United States Environmental Protection Agency, and the Breslube-Penn Performing Trust (the "Motion")², pursuant to Federal Rule of Bankruptcy Procedure 9019(a) and section 105 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended, and it appearing that proper and adequate notice has been given and that no other or further notice is required; and upon consideration of the United States' Notice of Response to Public Comments; and upon the record herein; and after due deliberation thereon; and sufficient cause appearing therefor; it is hereby

ORDERED that the Motion is **granted**; and it is further

ORDERED that the Settlement Agreement, in the form attached to the Motion, is **approved** in all respects; and it is further

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Hussey Copper Corp. (9993); HCL Liquidation Ltd. f/k/a Hussey Copper Ltd. (9994); OAP Real Estate, LLC (1298); Cougar Metals, Inc. (1674); Orbic Trading, L.P. (4969); and Hussey Exports Ltd. (8997). The Debtors' address is c/o Winter Harbor LLC, 6 Sandy Hill Terrace, Westport, Connecticut 06880.

² Capitalized terms used in this Order shall have the meaning ascribed to such terms in the Motion, unless the context hereof clearly requires otherwise.

ORDERED that the Court **APPROVES** the Settlement Agreement, as fair, reasonable and consistent with the environmental law; and it is further

ORDERED that the claims agent appointed in the Debtors' cases is hereby authorized and directed to revise the claims registry in these cases to reflect the treatment of claim nos. 538 and 539 of the United States on behalf of the United States Environmental Protection Agency and claim no. 465 of the Breslube-Penn Performing Trust, as set forth in the Settlement Agreement; and it is further

ORDERED that the Breslube-Penn Performing Trust's Motion for Relief [Docket No. 916] shall be deemed **settled** and **resolved** in accordance with the Consent Order, the Settlement Agreement, the Motion and this Order; and it is further

ORDERED that to the extent necessary to carry out the transactions or actions contemplated by the Consent Order, the Settlement Agreement, the Motion and this Order and notwithstanding anything contained in the confirmed Plan to the contrary, the automatic stay under 11 U.S.C. § 362(a), to the extent applicable, is hereby modified; and it is further

ORDERED that this Court shall retain jurisdiction to determine any and all disputes concerning the interpretation or implementation of this Order or the Settlement Agreement.

Honorable Brendan L. Shannon
United States Bankruptcy Judge

Dated: _____, 2012

03-2012-7013

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

| | | |
|---|---|---|
| In re: |) | Chapter 11 |
| |) | |
| Hussey Copper Corp., <i>et al.</i> , ¹ |) | Case No. 11-13010 (BLS) |
| |) | |
| Reorganized Debtors. |) | Jointly Administered |
| |) | Hearing Date: November 14, 2012 at 10:00 a.m. |
| |) | Objection Deadline: November 7, 2012 at 4:00 p.m. |

**REORGANIZED DEBTORS' MOTION FOR APPROVAL OF
SETTLEMENT AGREEMENT WITH THE UNITED STATES, ON
BEHALF OF THE UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY, AND THE BRESLUBE-PENN PERFORMING TRUST**

The above-captioned reorganized debtors (collectively, the "Debtors"), by and through their undersigned counsel, hereby file this motion (the "Motion") for entry of an order approving the settlement agreement (the "Settlement Agreement") attached hereto as Exhibit "A" between and among the Debtors, the United States on behalf of the United States Environmental Protection Agency (the "EPA") and the Breslube-Penn Performing Trust (the "Performing Trust") pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). In support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper in this judicial district under 28 U.S.C. §§ 1408 and 1409.

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Hussey Copper Corp. (9993); HCL Liquidation Ltd. f/k/a Hussey Copper Ltd. (9994); OAP Real Estate, LLC (1298); Cougar Metals, Inc. (1674); Orbie Trading, L.P. (4969); and Hussey Exports Ltd. (8997). The Debtors' address is c/o Winter Harbor LLC, 6 Sandy Hill Terrace, Westport, Connecticut 06880.

2. The statutory bases for the relief requested herein are Bankruptcy Rule 9019 and section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”).

BACKGROUND

A. The Debtors

3. On September 27, 2011 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief with the Court under chapter 11 of the Bankruptcy Code. After filing for relief, the Debtors served as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases (the “Chapter 11 Cases”). On October 7, 2011, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors of Hussey Copper Corp., *et al.* (the “Committee”).

4. Together with its affiliated Debtors, HCL Liquidation Ltd. f/k/a Hussey Copper Ltd. (“HCL”) was one of the leading manufacturers of copper products in the United States. Among other things, it offered a wide range of value-added copper products and copper-nickel products including sheet, strip, plate and bar, certain alloys, architectural products, tape/fin (used in power cable and heat exchanger products), fabricated products and gaskets. Founded in 1848, HCL had one manufacturing facility in Leetsdale, Pennsylvania (near Pittsburgh) and two facilities in Eminence, Kentucky. As of the Petition Date, HCL employed approximately 536 full-time employees.²

² Additional information regarding the Debtors’ businesses and the reasons for filing the Chapter 11 Cases are set forth in the Declaration of Dalton T. Edgecomb in Support of First Day Motions for Relief, filed on September 27, 2011 [Docket No. 2] (the “Edgecomb Affidavit”).

5. For reasons more fully set forth in the Edgecomb Affidavit, including, but not limited to, the economic downturn and fluctuations in the price of copper, the Debtors concluded that the sale of substantially all of their assets, subject to a competitive bidding process, was the best option to maximize value for their creditor constituencies. Following a court-approved auction held on November 14, 2011, the Debtors entered into an Asset Purchase Agreement with Libertas Copper, LLC ("Libertas"), the highest and best bidder for the Debtors' assets at auction. Thereafter, on November 18, 2011, the Court entered an order approving the sale of substantially all of the Debtors' assets to Libertas [Docket No. 300] and the sale subsequently closed.

6. By Order entered September 6, 2012, the Court confirmed the Debtors' Amended Chapter 11 Plan, as Modified (the "Plan") [Docket No. 1099]. The effective date of the Plan occurred on October 16, 2012.

B. Factual Background – The Site, the Consent Decree and the PRP Agreement

7. Prior to 1997, the EPA identified HCL and certain other persons as "potentially responsible parties" for the cost of investigation and/or remediation allegedly related to the release or threatened release of hazardous substances at the Breslube-Penn Superfund Site, located near Pittsburgh at 84 Montour Road, Coraopolis, Pennsylvania (the "Site").

8. In 1997, the EPA commenced a civil action in the United States District Court for the Western District of Pennsylvania, civil action no. 97-1863 (the "Litigation"), against certain parties, including Debtors Hussey Copper Corp. ("HCC") and HCL. The Litigation was resolved as to certain defendants, including HCC and HCL, by a consent decree entered on September 2, 2009 (the "Consent Decree"). Pursuant to the Consent Decree, and among other things, certain defendants in the Litigation, including HCC and HCL, agreed to

reimburse the EPA for past and future response costs incurred by the EPA and to undertake the implementation of an August 30, 2007 Record of Decision with respect to the Site.

9. In anticipation of the entry of the Consent Decree, certain potentially responsible parties, including HCL, entered into a First Amended and Restated PRP Agreement for RD/RA³, dated as of May 1, 2009 (the "PRP Agreement"). Pursuant to the terms of the PRP Agreement, HCL and certain other potentially responsible parties agreed, among other things, to share all of the past, present and future response costs incurred in connection with the Consent Decree, and the PRP Agreement established the Performing Trust to perform certain administrative functions associated with the Consent Decree and/or PRP Agreement.

C. The Proof of Claims

10. The EPA filed two proofs of claim in these cases – claim nos. 538 and 539 (the "EPA Claims"). These claims contend, among other things, that HCC and HCL are liable under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675, and pursuant to the Consent Decree, for costs incurred and to be incurred by the EPA in response to alleged releases and threats of releases of hazardous substances at or in connection with the Site. Each of the EPA Claims was filed in an unliquidated amount.

11. Separately, the Performing Trust filed proof of claim no. 465 (the "Performing Trust Claim") which contends, among other things, that HCL is liable to the Performing Trust pursuant to the PRP Agreement for certain costs incurred or to be incurred by the Performing Trust in connection with the Site. Although the Performing Trust Claim was filed in an unliquidated amount, it asserts secured status in the amount of \$350,105.29, based on:

³ The term "RD/RA" refers to "remedial design/remedial action".

(a) the Performing Trust's status as a junior beneficiary under a pre-petition letter of credit in the amount of \$163,507, posted by PNC Bank, N.A. (the "Letter of Credit")⁴; and (b) the Performing Trust's asserted rights to offset or recoup credits held by the Performing Trust for the benefit of HCL – representing HCL's allocable share of amounts received by the Performing Trust from other potentially responsible parties or other sources – in the amount of \$186,598.29 (the "HCL Credits") against the amounts now or in the future owed by HCL under the PRP Agreement.

D. The Performing Trust Motion

12. On June 28, 2012, the Performing Trust filed a Motion for Relief from the Automatic Stay (Docket No. 916) (the "Performing Trust Motion") requesting, *inter alia*, authorization to draw on the Letter of Credit and to exercise the Performing Trust's recoupment or setoff rights against the HCL Credits.

13. On August 17, 2012, the Bankruptcy Court entered a Consent Order (Docket No. 1059) that partially resolved the Performing Trust Motion by authorizing the Performing Trust to draw upon the Letter of Credit, but with the proceeds thereof to be held by counsel for the Performing Trust in its IOLTA account pending further order of the Court.

E. The Proposed Settlement Agreement

14. The Debtors, the EPA, and the Performing Trust have held certain discussions regarding the EPA Claims, the Performing Trust Claim and the Performing Trust Motion and, subject to Court approval, have reached agreement on such matters, as evidenced by the Settlement Agreement.

⁴ The senior beneficiary of the Letter of Credit is the EPA.

15. Although the Court and parties-in-interest respectfully are referred to Exhibit "A" for the full terms of the parties' agreement, the key provisions of the Settlement Agreement are as follows:⁵

A. Provisions Relating to the EPA

- i. With respect to the Site, the EPA shall have the following allowed claims (collectively, the "EPA Allowed Claims"):
 - (1) Claim no. 538, which shall be allowed as a general unsecured, non-priority claim against HCC in the amount of \$300,000. Claim no. 538 shall be treated as a Class 3A General Unsecured Claim under the Plan; and
 - (2) Claim no. 539, which shall be allowed as a general unsecured, non-priority claim against HCL in the amount of \$300,000. Claim no. 539 shall be treated as a Class 3B General Unsecured Claim under the Plan.
- ii. The EPA Allowed Claims shall receive the same treatment under the Plan, without discrimination, as all other allowed Class 3A and 3B Unsecured Claims, as applicable, with all attendant rights provided by the Bankruptcy Code and other applicable law, and shall not be entitled to any priority in distribution over other allowed Class 3A or 3B Unsecured Claims, as applicable. In no event shall the EPA Allowed Claims be subordinated to any other allowed Class 3A or 3B Unsecured Claim, as applicable.
- iii. The EPA may, in its sole discretion, deposit any portion of any distributions it receives on account of the EPA Allowed Claims into an EPA special account established for the Site within the Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred to the Hazardous Substance Superfund.
- iv. Only the amount of cash received by the EPA on account of the EPA Allowed Claims, and not the total amount of the EPA Allowed Claims, shall be credited by EPA to its account for the Site, which credit shall reduce the liability of non-settling

⁵ The following is only a summary of certain provisions of the Settlement Agreement and the reader is encouraged to review the Settlement Agreement in its entirety. To the extent there is a conflict between the actual terms of the Settlement Agreement and the summary contained herein, the Settlement Agreement shall control.

potentially responsible parties for that site by the amount of the credit.

- v. In consideration of the distributions that will be made on account of the EPA Allowed Claims, and except as specifically provided otherwise in the Settlement Agreement, the EPA covenants not to file a civil action or take administrative action against any of the Debtors pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, with respect to the Site.
- vi. Nothing in the Settlement Agreement is intended as a covenant for any person or entity other than the Debtors and the United States. The EPA and the Debtors expressly reserve all claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or equity, which they may have against all other persons, firms, corporations, entities, or predecessors of the Debtors for any matter arising at or relating in any manner to the Site. Further, nothing in the Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to enter into any settlement that gives rise to contribution protection for any person not a party to the Settlement Agreement.
- vii. The United States expressly reserves, and the Settlement Agreement is without prejudice to, all rights against the Debtors with respect to all matters other than those set forth in subparagraph 15(v), above. The United States also reserves, and the Settlement Agreement is without prejudice to, any action based on a failure to meet a requirement of the Settlement Agreement. In addition, the United States reserves, and the Settlement Agreement is without prejudice to, all rights against the Debtors with respect to the Site for liability under federal or state law for acts by the Debtors, their successors, or assigns that occur after the date of lodging of the Settlement Agreement.
- viii. The Debtors covenant not to sue and agree not to assert or pursue any claims or causes of action against the United States, including any department, agency, or instrumentality of the United States, with respect to the Site, including, but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established pursuant to 26 U.S.C. § 9507; (ii) any claim under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, or Section 7002(a) of RCRA, 42 U.S.C. § 6972(a); or (iii) any claims arising out of response activities at the Site. Nothing in the Settlement Agreement shall be deemed to constitute

preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

B. Provisions Relating to the Performing Trust

- ix. Upon Court approval of the Settlement Agreement, the relief requested by the Trust in the Trust Motion, to the extent not already granted by the Consent Order, shall be deemed to have been granted such that de maximis, inc., as Trustee for the Performing Trust, may issue from time to time assessments or other demands to HCL pursuant to the PRP Agreement, and may take any other necessary action to enable it to draw on the Letter of Credit (or, if the proceeds of such Letter of Credit are held by counsel to the Trust pursuant to the Consent Order, to obtain such proceeds from counsel to the Trust which counsel shall, upon Court approval of the Settlement Agreement, be deemed authorized to pay such proceeds to the Trust) and to exercise its recoupment or setoff rights against the HCL Credits.
- x. The Performing Trust shall have no claims against, or right to recovery from, any of the Debtors except as expressly set forth above and in the Settlement Agreement and the Consent Order.
- xi. The Performing Trust Claim (claim no. 465) shall be deemed fully satisfied by the treatment set forth in the Settlement Agreement the Order Approving the Settlement Agreement (if and when entered) and the Consent Order.
- xii. The Debtors shall have no claims against, or right to recovery from, the Performing Trust or any of the Performing PRPs (as defined in the PRP Agreement) or the Trustee of the Performing Trust for any credits or any other matter addressed in the Settlement Agreement.

C. Provisions Relating to All Parties

- xiii. The Settlement Agreement is subject to approval of the Court.
16. The Settlement Agreement is subject to a period of public comment following publication of notice of the Settlement Agreement in the *Federal Register*. After the conclusion of the public comment period, the EPA will file with the Court any comments received, as well as the EPA's responses to the comments and at that time, if appropriate, the EPA will request approval of the Settlement Agreement. The Settlement Agreement provides

that the EPA reserves the right to withdraw or withhold its consent if the comments regarding the Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is not in the public interest.

17. If for any reason (a) the Settlement Agreement is withdrawn by the United States as provided in Paragraph 17 of the Settlement Agreement, or (b) the Settlement Agreement is not approved by the Bankruptcy Court: (i) the Settlement Agreement shall be null and void, and the parties thereto shall not be bound under the Settlement Agreement or under any documents executed in connection therewith, other than the Consent Order which shall remain in full force and effect; (ii) the parties shall have no liability to one another arising out of or in connection with the Settlement Agreement or under any documents executed in connection therewith except for any obligations of the Debtors or the Trust under the Consent Order; (iii) the Trust may proceed to seek the remaining relief sought in the Trust Motion and all parties' rights, remedies and defenses with respect thereto shall be reserved; and (iv) the Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value.

BASIS FOR RELIEF

18. Bankruptcy Rule 9019 is committed to the discretion of the court. Key3Media Group, Inc. v. Pulver.com, Inc. (In re Key3Media Group, Inc.), 336 B.R. 87, 92 (Bankr. D. Del. 2005). Indeed, the court must decide whether "the compromise is fair, reasonable, and in the best interest of the estate." In re TSIC, Inc., 393 B.R. 71, 78 (Bankr. D. Del. 2008). In analyzing whether a compromise is fair and equitable, the court looks to the fairness of the settlement to all parties in interest. Will v. Northwestern Univ. (In re Nutraquest, Inc.), 434 F.3d 639, 645 (3d Cir. 2006). Moreover, when considering the best interest of the

estate, the court must "assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal." Myers v. Martin (In re Martin), 91 F.3d 389, 393 (3d Cir. 1996) (citing Protective Comm. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25 (1968)). In striking this balance, the court should consider: (1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of creditors. Martin, 91 F.3d at 393. The court does not have to be convinced that the settlement is the best possible compromise; rather, the court must conclude that the settlement is within the reasonable range of litigation possibilities. In re World Health Alternatives, Inc., 344 B.R. 291, 296 (Bankr. D. Del. 2006).

19. Without question, the interests of creditors will be served by Court approval of the Settlement Agreement, for several reasons.

20. First, the Settlement Agreement, which was negotiated at arms-length and in good faith, reflects an equitable resolution of the EPA Claims. The amounts of the EPA Claims proposed to be allowed under the Settlement Agreement closely approximate HCL's agreed-upon allocated share of the overall Site-related costs under the Consent Decree, rather than HCC's and HCL's potential liability, on a joint and several theory, for all such costs. That is, the Settlement Agreement reflects a significant concession from the EPA, which could have contended that the allowed amount of its claims should reflect HCC's and HCL's alleged joint and several liability for *all* obligations under the Consent Decree, rather than merely such Debtors' *proportionate share* of such liabilities, as allocated under the PRP Agreement. This result clearly is in the best interests of the HCC and HCL estates, as well as all other creditors of

HCC and HCL. Separately, it permits response activities at the Site to proceed essentially in accordance with the Consent Decree and the PRP Agreement.

21. Second, the EPA Claims to be allowed under the Settlement Agreement are general unsecured (non-priority) claims, rather than administrative claims or obligations not constituting "claims" under Section 101(5) of the Bankruptcy Code, as suggested by the EPA Claims. The Settlement Agreement thus avoids what could have been expensive, difficult and time-consuming litigation regarding the nature and priority of the EPA Claims.

22. With respect to the proposed resolution of the Debtors' disputes with the Performing Trust, the Settlement Agreement represents what the Debtors believe is a practical and equitable resolution of the Performing Trust Motion, given the specific relief sought in the motion and the Debtors' likelihood of success were they to contest the Performing Trust's entitlement to such relief. Moreover, the Settlement Agreement resolves any remaining issues regarding the Performing Trust Claim and the Performing Trust's entitlement to additional recoveries on account of such claim, which essentially are waived under the Settlement Agreement. The Settlement Agreement accordingly avoids what could be expensive, difficult and time-consuming litigation regarding both the Performing Trust Motion and the Performing Trust Claim, for the benefit of all creditors and parties-in-interest.

23. For the foregoing reasons, the Debtors respectfully submit that the Settlement Agreement is in the best interest of all creditors and parties-in-interest, and should be approved by the Court.

Notice

24. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the Office of the United States Attorney

for the District of Delaware; (c) the Offices of the United States Attorney for the Commonwealth of Pennsylvania; (d) the Offices of the United States Attorney for the Commonwealth of Kentucky; (e) the Office of the Attorney General for the State of Delaware; (f) the Office of the Attorney General for the Commonwealth of Pennsylvania; (g) the Office of the Attorney General for the Commonwealth of Kentucky; (h) the State of Delaware Department of Labor and Industry; (i) the Commonwealth of Pennsylvania Department of Labor and Industry; (j) the Commonwealth of Kentucky Department of Labor and Industry; (k) counsel to the Committee; (l) counsel to PNC Bank, National Association, as lender, issuer and agent for the Debtors' pre-petition and post-petition secured lenders; (m) counsel to Schneider Electric USA, Inc.; (n) the Internal Revenue Service; (o) the Pension Benefit Guaranty Corporation; (p) counsel to Libertas Copper, LLC; (q) counsel to Challenger Brass & Copper Co., Inc.; (r) counsel to the EPA; (s) counsel to the Performing Trust; and (t) those persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedures. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

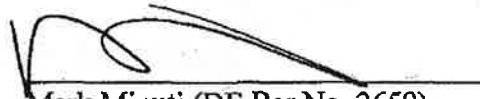
No Prior Request

25. Other than the request to enter the Consent Order, no prior application for the relief sought herein has been made by the Debtors to this or any other Court.

WHEREFORE, the Debtors respectfully request that this Court (a) enter an order approving the Settlement Agreement and (b) grant such other and further relief as is just and proper.

Dated: October 17, 2012

SAUL EWING LLP



Mark Minuti (DE Bar No. 2659)
222 Delaware Avenue, Suite 1200
P.O. Box 1266
Wilmington, DE 19899
Telephone: (302) 421-6840
Facsimile: (302) 421-5873

-and-

Jeffrey C. Hampton
Adam H. Isenberg
Robyn F. Pollack
Monique A. Bair
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102
Telephone: (215) 972-7777
Facsimile: (215) 972-7725

Counsel for Reorganized Debtors

| | | |
|---|---|---|
| In re: |) | Chapter 11 |
| |) | |
| Hussey Copper Corp., <i>et al.</i> , ¹ |) | Case No. 11-13010 (BLS) |
| |) | |
| Reorganized Debtors. |) | Jointly Administered |
| |) | Hearing Date: November 14, 2012 at 10:00 a.m. |
| |) | Objection Deadline: November 7, 2012 at 4:00 p.m. |

PLEASE TAKE NOTICE that on October 17, 2012, the above-captioned reorganized debtors (the “**Debtors**”) filed the **Reorganized Debtors’ Motion for Approval of Settlement Agreement with the United States, on Behalf of the United States Environmental Protection Agency, and the Breslube-Penn Performing Trust** (the “**Motion**”), with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).

PLEASE TAKE FURTHER NOTICE that if any objections or responses are received in accordance with the procedures set forth herein, a hearing with respect to the Motion will be held on **November 14, 2012 at 10:00 a.m.** before the Honorable Brendan L. Shannon, United States Bankruptcy Judge, at the United States Bankruptcy Court, 824 Market Street, 6th Floor, Courtroom #1, Wilmington, Delaware 19801.

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Hussey Copper Corp. (9993); HCL Liquidation Ltd. f/k/a Hussey Copper Ltd. (9994); OAP Real Estate, LLC (1298); Cougar Metals, Inc. (1674); Orbie Trading, L.P. (4969); and Hussey Exports Ltd. (8997). The Debtors' address is c/o Winter Harbor LLC, 6 Sandy Hill Terrace, Westport, Connecticut 06880.

Dated: October 17, 2012

SAUL EWING LLP



Mark Minuti (DE Bar No. 2659)
222 Delaware Avenue, Suite 1200
P.O. Box 1266
Wilmington, DE 19899
Telephone: (302) 421-6840
Facsimile: (302) 421-5873

-and-

Jeffrey C. Hampton
Adam H. Isenberg
Robyn F. Pollack
Monique A. Bair
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102
Telephone: (215) 972-7777
Facsimile: (215) 972-7725

Counsel for Reorganized Debtors

Exhibit A

Settlement Agreement

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Hussey Copper Corp., et al.,
Debtors.

Chapter 11
Case No. 11-13010 (BLS)
Jointly Administered

SETTLEMENT AGREEMENT

WHEREAS, Hussey Copper Corporation and certain of its affiliates (collectively, the "Debtors")^{*} filed with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") voluntary petitions for relief under Title 11 of the United States Code (the "Bankruptcy Code") on September 27, 2011 (the "Petition Date"), which have been consolidated for procedural purposes and are being jointly administered as *In re: Hussey Copper Corp., et al.*, Case No. 11-13010 (BLS) (the "Bankruptcy Cases");

WHEREAS, the United States, on behalf of the United States Environmental Protection Agency ("EPA"), has filed two proofs of claim (Claim Nos. 538, 539) (the "EPA Proofs of Claim"), contending that Debtors Hussey Copper Corp. ("HCC") and HCL Liquidation Ltd (f/k/a Hussey Copper Ltd.) ("HCL") are liable under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675, for costs incurred and to be incurred by the United States in response to releases and threats of releases of hazardous substances at or in connection with the Breslube-Penn Superfund Site, located near Pittsburgh at 84 Montour Road, Coraopolis, Pennsylvania (the "Site");

WHEREAS, the Breslube-Penn Performing Trust ("Trust") has filed a proof of claim (Claim No. 465) (the "Trust Proof of Claim"), contending that Debtor HCL, having on or about May 1, 2009 entered into that certain First Amended and Restated PRP Agreement for RD/RA at

^{*} The Debtors are as follows: Hussey Copper Corp., HCL Liquidation Ltd. (f/k/a Hussey Copper Ltd.), OAP Real Estate, LLC, Cougar Metals, Inc., Orbie Trading, L.P., and Hussey Exports Ltd.

the Site (the "PRP Agreement"), is liable to the Trust pursuant to the PRP Agreement for certain costs incurred by the Trust in connection with the Site;

WHEREAS, on June 28, 2012, the Trust filed a Motion for Relief from the Automatic Stay (Docket No. 916) (the "Trust Motion") requesting, inter alia, authorization to draw on a Letter of Credit (as defined in the Trust Motion) and to exercise the Trust's recoupment or setoff rights for any credit held for the benefit of the Debtors under the PRP Agreement against amounts now or in the future owed by the Debtors under the PRP Agreement;

WHEREAS, on August 17, 2012, the Bankruptcy Court entered a Consent Order (Docket No. 1059) that partially resolved the Trust Motion by authorizing the Trust to draw upon the Letter of Credit, but with the proceeds thereof to be held by counsel for the Trust in its IOLTA account pending further order of court (which would include any order approving this Settlement Agreement);

WHEREAS, the Debtors disagree with the United States' and the Trust's contentions and, but for this Settlement Agreement and the Consent Order, would dispute, in whole or in part, the EPA Proofs of Claim, the Trust Proof of Claim and the Trust Motion;

WHEREAS, the Debtors, EPA, and the Trust wish to resolve their differences with respect to the EPA Proofs of Claim, the Trust Proof of Claim and the Trust Motion (including the distribution of the Letter of Credit proceeds and the recoupment or setoff issues), all as provided herein;

WHEREAS, this Settlement Agreement is in the public interest and is an appropriate means of resolving these matters;

NOW, THEREFORE, without the admission of liability or the adjudication of any issue of fact or law, and upon the consent and agreement of the parties to this Settlement Agreement by their attorneys and authorized officials, it is hereby agreed as follows:

1. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334, and 42 U.S.C. §§ 9607 and 9613(b).

2. With respect to the Site, the United States on behalf of EPA shall have the following allowed claims (collectively, the "EPA Allowed Claims"):

- a. Claim no. 538, which shall be allowed as a general unsecured, non-priority claim against HCC in the amount of \$300,000. Claim no. 538 shall be treated as a Class 3A General Unsecured Claim under the Debtors' Plan of Reorganization, dated July 18, 2012 (as such plan may be amended, the "Plan of Reorganization" or "Plan"); and
- b. Claim no. 539, which shall be allowed as a general unsecured, non-priority claim against HCL in the amount of \$300,000. Claim no. 539 shall be treated as a Class 3B General Unsecured Claim under the Debtors' Plan.

3. The EPA Allowed Claims shall receive the same treatment under the Plan of Reorganization, without discrimination, as all other allowed Class 3A and 3B Unsecured Claims, as applicable, with all attendant rights provided by the Bankruptcy Code and other applicable law, and shall not be entitled to any priority in distribution over other allowed Class 3A or 3B Unsecured Claims, as applicable. In no event shall the EPA Allowed Claims be subordinated to any other allowed Class 3A or 3B Unsecured Claim, as applicable, pursuant to any provision of the Bankruptcy Code or other applicable law that authorizes or provides for subordination of

allowed claims, including, without limitation, Sections 105, 510, and 726(a)(4) of the Bankruptcy Code.

4. EPA may, in its sole discretion, deposit any portion of any cash distributions it receives on account of the EPA Allowed Claims, and any portion of the proceeds of any non-cash distributions it receives on account of the EPA Allowed Claims, into an EPA special account established for the Site within the Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred to the Hazardous Substance Superfund.

5. Only the amount of cash received by EPA (and net cash received upon sale of any non-cash distributions) on account of the EPA Allowed Claims, and not the total amount of the EPA Allowed Claims, shall be credited by EPA to its account for the Site, which credit shall reduce the liability of non-settling potentially responsible parties for that site by the amount of the credit.

6. Cash distributions to the United States on account of the EPA Allowed Claims shall be made at <https://www.pay.gov> or by FedWire Electronic Funds Transfer in accordance with instructions, including a Consolidated Debt Collection System ("CDCS") number, to be provided to the Debtors by the Financial Litigation Unit of the United States Attorney's Office for the District of Delaware.

Non-cash distributions to the United States shall be made to:

U.S. EPA
Cincinnati Finance Center
4411 Montgomery Road
Suite 310
Cincinnati, OH 45212

At the time of any cash or non-cash distribution on account of the EPA Allowed Claims, the Debtors shall transmit written confirmation of such distribution to the United States at the addresses specified below, with a reference to Bankruptcy Case Number 11-13010 (BLS) (Bankr. Del.), the CDCS number, and Site/Spill ID Number 03BD:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044
Ref. DOJ File No. 90-11-3-1762/6

Jefferie Garcia
Senior Assistant Regional Counsel (3RC42)
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

7. The EPA represents and warrants that it currently owns, has not transferred, and will not transfer prior to Bankruptcy Court approval of this Settlement Agreement, either of the EPA Proofs of Claim to any person or entity. Subject to the forgoing, but notwithstanding any other provision of this Settlement Agreement, and except as provided under applicable non-bankruptcy law, there shall be no restrictions on the ability and right of EPA to transfer or sell all or a portion of any securities distributed to it pursuant to the Plan of Reorganization, to sell its right to all or a portion of any distributions under the Plan to one or more third parties, or to transfer or sell to one or more third parties all or a portion of one or both of the EPA Allowed Claims.

8. In consideration of the distributions that will be made on account of the EPA Allowed Claims, and except as specifically provided in Paragraphs 9-11, EPA covenants not to file a civil action or take administrative action against any of the Debtors pursuant to Sections

106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, with respect to the Site.

9. The covenant set forth in Paragraph 8 extends only to the Debtors and does not extend to any other person. Nothing in this Settlement Agreement is intended as a covenant for any person or entity other than the Debtors and the United States. EPA and the Debtors expressly reserve all claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or equity, which they may have against all other persons, firms, corporations, entities, or predecessors of the Debtors for any matter arising at or relating in any manner to the Site. Further, nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to enter into any settlement that gives rise to contribution protection for any person not a party to this Settlement Agreement.

10. The covenant set forth in Paragraph 8 does not pertain to any matters other than those expressly specified therein. The United States expressly reserves, and this Settlement Agreement is without prejudice to, all rights against the Debtors with respect to all matters other than those set forth in Paragraph 8. The United States also specifically reserves, and this Settlement Agreement is without prejudice to, any action based on a failure to meet a requirement of this Settlement Agreement. In addition, the United States reserves, and this Settlement Agreement is without prejudice to, all rights against the Debtors with respect to the Site for liability under federal or state law for acts by the Debtors, their successors, or assigns that occur after the date of lodging of this Settlement Agreement.

11. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States to take any response action under Section 104 of CERCLA, 42 U.S.C. § 9604, or

any other applicable statute or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States pursuant to such authority, provided, however, that nothing in this sentence affects the covenant set forth in Paragraph 8. Nothing in this Settlement Agreement shall be deemed to limit the information-gathering authority of the United States under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable statute or regulation, or to excuse the Debtors from any disclosure or notification requirements imposed by CERCLA or any other applicable statute or regulation.

12. The Debtors covenant not to sue and agree not to assert or pursue any claims or causes of action against the United States, including any department, agency, or instrumentality of the United States, with respect to the Site, including, but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established pursuant to 26 U.S.C. § 9507; (ii) any claim under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, or Section 7002(a) of RCRA, 42 U.S.C. § 6972(a); or (iii) any claims arising out of response activities at the Site. Nothing in this Settlement Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

13. Notwithstanding any other provision of this Settlement Agreement, the Debtors reserve, and this Settlement Agreement is without prejudice to, claims against the United States in the event any claim is asserted by the United States against the Debtors pursuant to any of the reservations set forth in Paragraph 10, other than for failure to meet a requirement of this Settlement Agreement, but only to the extent that the Debtors' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

14. The Trust represents and warrants that it currently owns, has not transferred, and will not transfer prior to Bankruptcy Court approval of this Settlement Agreement, the Trust Proof of Claim to any person or entity. Upon Bankruptcy Court approval of this Settlement Agreement, the relief requested by the Trust in the Trust Motion, to the extent not already granted by the Consent Order, shall be deemed to have been granted such that de maximis, inc., as Trustee for the Trust, may issue from time to time assessments or other demands to HCL pursuant to the PRP Agreement, and may take any other necessary action to enable it to draw on the Hussey Letter of Credit issued by PNC Bank, N.A., in the sum of \$163,507 (or, if the proceeds of such Letter of Credit are held by counsel to the Trust pursuant to the Consent Order, to obtain such proceeds from counsel to the Trust which counsel shall, upon Bankruptcy Court approval of this Settlement Agreement, be deemed authorized to pay such proceeds to the Trust) and to exercise its recoupment or setoff rights for any credit held for the benefit of the Debtors against amounts now or in the future owed by the Debtors under the PRP Agreement, it being understood and agreed, however, that (a) the Trust shall have no claims against, or right to recovery from, any of the Debtors except as expressly set forth in this paragraph 14 and the Consent Order, (b) the Trust Proof of Claim (claim no. 465) shall be deemed fully satisfied by the treatment set forth in this Settlement Agreement and the Consent Order, and (c) the Debtors shall have no claims against, or right to recovery from, the Trust or any of the Performing PRPs (as defined in the PRP Agreement) or the Trustee of the Trust for any credits or any other matter addressed in this Settlement Agreement.

15. The parties hereto agree, and by approving this Settlement Agreement the Bankruptcy Court shall be deemed to find that this Settlement Agreement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. §

9613(f)(2), and that the Debtors are entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken, and all response costs incurred or to be incurred, at or in connection with the Site by the United States or any potentially responsible parties, provided, however, that, if EPA exercises rights under the reservations in Paragraph 10, other than for failure to meet a requirement of this Settlement Agreement, the "matters addressed" in this Settlement Agreement shall no longer include those response costs or response actions that are within the scope of the exercised reservation.

16. This Settlement Agreement shall be subject to approval of the Bankruptcy Court. The Debtors shall promptly seek approval of this Settlement Agreement under Bankruptcy Rule 9019 or applicable provisions of the Bankruptcy Code.

17. This Settlement Agreement shall be lodged with the Bankruptcy Court and shall thereafter be subject to a period of public comment following publication of notice of the Settlement Agreement in the *Federal Register*. After the conclusion of the public comment period, the United States will file with the Bankruptcy Court any comments received, as well as the United States' responses to the comments, and at that time, if appropriate, the United States will request approval of the Settlement Agreement. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is not in the public interest.

18. If for any reason (a) the Settlement Agreement is withdrawn by the United States as provided in Paragraph 17, or (b) the Settlement Agreement is not approved by the Bankruptcy Court: (i) this Settlement Agreement shall be null and void, and the parties hereto shall not be

bound under the Settlement Agreement or under any documents executed in connection herewith, other than the Consent Order which shall remain in full force and effect; (ii) the parties shall have no liability to one another arising out of or in connection with this Settlement Agreement or under any documents executed in connection herewith except for any obligations of the Debtors or the Trust under the Consent Order; (iii) the Trust may proceed to seek the remaining relief sought in the Trust Motion and all parties' rights, remedies and defenses with respect thereto shall be reserved; and (iv) this Settlement Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value.

19. This Settlement Agreement constitutes the sole and complete agreement of the parties hereto with respect to the matters addressed herein.

20. This Settlement Agreement may not be amended except by a writing signed by all the parties and approved by the Bankruptcy Court.

21. This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

22. The Bankruptcy Court (or, upon withdrawal of the Bankruptcy Court's reference, the United States District Court for the District of Delaware) shall retain jurisdiction over the subject matter of this Settlement Agreement and the parties hereto for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the parties to apply at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement or to effectuate or enforce compliance with its terms.

The undersigned party hereby enters into this Settlement Agreement in In re: Hussey Copper Corp., et al., Case No. 11-13010 (BLS) (Bankr. Del.).

FOR THE UNITED STATES OF AMERICA:


ROBERT MAHER

Acting Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division

9/12/12
DATE



MARCELLO MOLLO

Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-2757


9/17/12
DATE

The undersigned party hereby enters into this Settlement Agreement in In re: Hussey Copper Corp., et al., Case No. 11-13010 (BLS) (Bankr. Del.).


FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:


SHAWN M. GARVIN
Regional Administrator, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

10/10/12
DATE


MARCIA E. MULKEY
Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103

10/12/12
DATE



JEFFERIE GARCIA
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103

10/3/12
DATE

The undersigned party hereby enters into this Settlement Agreement in In re: Hussey Copper Corp., et al., Case No. 11-13010 (BLS) (Bankr. Del.).

FOR THE BRESLUBE-PENN PERFORMING TRUST:

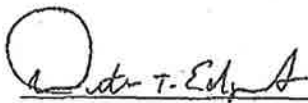
de maximis, Inc., Trustee

By: 
R. Thomas Dorsey, Chief Financial Officer
450 Montbrook Lane
Knoxville, Tenn. 37919-2705

8/31/12
DATE

The undersigned party hereby enters into this Settlement Agreement in In re: Hussey Copper Corp., et al., Case No. 11-13010 (BLS) (Bankr. Del.).

FOR THE DEBTORS:



Dalton T. Edgecomb
Chief Restructuring Officer
c/o Winter Harbor LLC
6 Sandy Hill Terrace
Westport, CT 06880

9-5-12
DATE